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February 16, 2023

VIA CM/ECF

Hon. Sarah L. Cave
United States Magistrate Judge
Southern District of New York
500 Pearl Street, Room 1670
New York, NY 10007

Re: *Flynn et al v. Cable News Network*, No. 1:21-cv-02587 (S.D.N.Y.)

Dear Judge Cave:

The undersigned represents CNN as conflict counsel regarding the discovery of certain social media records. Since the hearing on October 28, 2022, CNN has worked with Twitter to obtain data from accounts maintained by Plaintiffs John and Leslie Flynn, subpoenaed non-parties Gen. Michael Flynn, Michael Flynn, Jr., Joseph Flynn, Mary Flynn O'Neill, and plaintiffs in a related action, Valerie and Lori Flynn, all of whom are represented by Steven Biss (collectively, "the Flynns"). Twitter intends to verify the SCA consent forms executed by the Flynns after the hearing. Independent verification is needed, in part, by the Flynns' counsel's representations that one of the Flynns (Valerie) is not associated with the Twitter handle CNN believes to be associated with her.

Twitter seeks to recoup its costs of compliance, per Rule 45, and has offered to CNN a flat rate of \$12,000 to cover its legal fees and costs. Twitter has also repeatedly indicated to counsel for CNN, which it has relayed to the Flynns' counsel on several occasions, that the Flynns are able to access and download their own Twitter data through Twitter's DIY procedures, even if their account(s) is/are suspended.¹ The Flynns' counsel has refused, to date, to download the data.²

CNN seeks an order compelling the Flynns to download the Twitter data for the outstanding accounts - **@GenFlynn**, **@zulutym**, **@lofly727**, **@MFlynnJr**, **@GoJackFlynn**, **@JosephJFlynn1** – and to report to CNN with specificity any handles for which the Flynns are unable to obtain data.³ Alternatively, if the Court accepts the Flynns' refusal to download their own data, CNN requests an order requiring the Flynns to reimburse to Twitter its cost of compliance and to otherwise cooperate with Twitter in independently verifying the identity of the account holders. *See In re: Propecia (Finasteride) Products Liab. Litig.*, 13-CV-1245 (BMC)(PK), 2016 WL 6205786, at *2 (E.D.N.Y. Oct. 24, 2016) (noting the Federal Rules' "emphasis on proportionality and the ability to allocate discovery costs for unnecessary discovery.")

¹ If the Court wishes to review the communications between CNN's counsel and Mr. Biss, CNN will provide them for *in camera* review.

² Mr. Biss is competent to follow the Twitter DIY procedures because he has produced Twitter files for four of the Twitter handles at issue: (@lofly1981, @GoJackFlynn1, @lflynn1998 and @jflynn064). Mr. Biss has also represented to CNN counsel that he obtained the Twitter data for Joseph Flynn (@JosephJFlynn1) but to date has failed to produce it.

³ If any of these accounts have been deactivated, it is important to Twitter to know the date the account was deactivated so that it can determine whether data may still exist in Twitter's records. Additionally, if the Flynns directly download their data, CNN will accept (without waiver) Mr. Biss' representation that Valerie Flynn is not associated with the **@flynnsta1** Twitter handle.

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Sincerely,
Shullman Fugate PLLC

A handwritten signature in dark ink, appearing to read "Deanna K. Shullman". The signature is fluid and cursive, with the first name "Deanna" and last name "Shullman" clearly distinguishable.

Deanna K. Shullman
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